

REMARKS

Applicants have amended Claim 14 to delete a redundant “or” in definition of R⁴. Applicants submit that their claims remain fully supported by the specification.

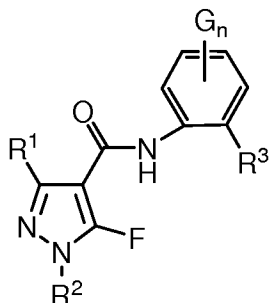
Restriction Requirement under 35 U.S.C. 121

Applicants gratefully acknowledge acceptance of their arguments about the scope of the examined claims. However, Applicants again respectfully request rejoinder of withdrawn Claim 21. In any case, Applicants reserve the right to file one or more divisional applications directed to non-elected subject matter.

Rejection under 35 U.S.C. 103

Claims 13-16, 18 and 20 stand rejected under 35 U.S.C. 103(a) as being unpatentable over DE 10136065 by Elbe et al (“the ‘065 publication”), a German language document corresponding to published US 2004/0204470, listed in Applicants’ Form PTO 1449, and now issued as U.S. Patent 7,538,073. Applicants respectfully traverse.

As fully discussed in Applicants’ previous Amendment dated January 21, 2010, the ‘065 publication discloses pyrazolylcarboxanilides having the formula



in which R¹ is hydrogen, cyano, halogen, nitro, (halo)alkyl, cycloalkyl, (halo)alkoxy, (halo)alkylthio, or aminocarbonylalkyl; R² is hydrogen, (halo)alkyl, alkenyl, cycloalkyl, (halo)alkylthioalkyl, or (halo)alkoxyalkyl; R³ is unsubstituted C₂-C₂₀-alkyl, C₁-C₂₀-alkyl that is mono- or polysubstituted by halogen or cycloalkyl, or optionally halogen- or cyclohexyl-substituted alkenyl or alkynyl; G is halogen or alkyl; and n is 0, 1, or 2. E.g., corresponding ‘073 patent at column 1, lines 24-67. The ‘065 publication does not disclose or suggest compounds in which the bridging amide nitrogen atom bears a substituent other than hydrogen.

Applicants claimed compounds, in contrast, are characterized by an alkyl, alkoxyalkyl, haloalkyl, or diketo substituent R⁴ on the bridging amide nitrogen atom. However, the Final Office Action at page 3 maintains that those skilled in the art would expect compounds having such substituents to exhibit properties similar to the corresponding unsubstituted compounds. Applicants submit that those skilled in the art would have no expectation beyond essentially equivalent biological properties. (It is even possible that removing the amide hydrogen atom and the additional steric bulk might be expected to have an adverse effect on efficacy.) Applicants now submit supporting data in a Declaration under 37 C.F.R. 1.132 of Dr. Peter Dahmen showing that an inventive N-methyl compound of their Example 3 and inventive N-acylated compound of their Example 2 exhibit unexpectedly greater activity against two fungi in three tests than a corresponding unsubstituted compound of formula I-1 of the '065 publication.

Applicants therefore respectfully submit that they have overcome any inference of obviousness and that their claimed invention is patentably distinct from DE 10136065.

Double Patenting Rejection

Claims 13-18 and 20 stand rejected on the ground of nonstatutory obviousness type double patenting as being unpatentable over Claims 22-35, 37, and 46 of copending published US 2004/0204470 (which, as noted above, is a counterpart of DE 10136065 and has now issued as U.S. Patent 7,538,073). Applicants respectfully traverse.

For essentially the reasons discussed above with respect to the obviousness rejection based on the DE 10136065, Applicants submit that their claims are directed to non-obvious subject matter and are thus patentably distinct from US 2004/0204470 and the issued '073 patent. Applicants therefore do not at this time offer to submit a terminal disclaimer as kindly suggested in the previous Office Action.

In view of the preceding amendments and remarks, allowance of the claims is respectfully requested.

Respectfully submitted,

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